

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 SUSAN MELTON WILSON
Deputy Attorney General
4 State Bar No. 106902
300 So. Spring Street, Suite 1702
5 Los Angeles, CA 90013
Telephone: (213) 897-4942
6 Facsimile: (213) 897-2804
E-mail: Susan.Wilson@doj.ca.gov
7 Attorneys for Complainant

8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2011-996

12 **CHERYL ANN GASPARINI,**
13 **a.k.a. CHERYL ANN MITCHENER**
1016 Briarcliff Road
14 Monrovia, CA 91016

ACCUSATION

15 Registered Nurse License No. 476749

16 Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1992, the Board of Registered Nursing issued Registered
24 Nurse License Number 476749 to Cheryl Ann Gasparini, a.k.a. Cheryl Ann Mitchener
25 (Respondent). The Registered Nurse License was in full force and effect at all times relevant to
26 the charges brought herein and will expire on February 29, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2761, subdivision (a) of the Code provides in pertinent part, that the board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for unprofessional conduct.

6. Section 2762 of the Code states:

"In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

"(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

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1 7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
2 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
3 licensee or to render a decision imposing discipline on the license.

4 8. Health and Safety Code Section 11170 states that no person shall prescribe,
5 administer, or furnish a controlled substance for himself.

6 9. Health and Safety Code Section 11171 provides that no person shall prescribe,
7 administer, or furnish a controlled substance, except under the conditions and in the manner set
8 forth in the Uniform Controlled Substance Act (setting forth requirements for prescription and
9 furnishing of narcotics).

10 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
11 administrative law judge to direct a licensee found to have committed a violation or violations of
12 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
13 enforcement of the case.

14 **DRUG CLASSIFICATIONS**

15 11. Hydromorphone Hydrochloride, also commonly known by the brand name
16 "Dilaudid", is an opiate pain medication, and a schedule II controlled substance as designated by
17 Health and Safety Code Section 11055(b)(1)(k); and is categorized as a "dangerous drug"
18 pursuant to Business and Professions Code Section 4022.

19 **SUMMARY OF FACTS**

20 12. The following allegations are common to all causes for discipline:

21 a. On or about the morning of July 29, 2009, Respondent was on duty as a registered
22 nurse at the City of Hope National Medical Center ("City of Hope") in Arcadia, CA, where she
23 had been employed since 2006.

24 b. Co-workers reported that Respondent was disoriented and unfocused, that she
25 "appeared dazed and had an unsteady gait", and that she "swayed back and forth while standing"
26 so as to cause her nursing supervisors to determine that she was unsafe to continue working with
27 patients, and to request that she be seen immediately by a City of Hope physician, out of concern
28 that her symptoms were caused by illness.

1 c. At or about 1030 hours, after brief medical evaluation, the physician recommended
2 that Respondent be referred to Human Resources, to determine whether Respondent would be
3 required to submit to drug testing, as permitted per conditions of her employment.

4 d. Respondent was shortly thereafter required to provide a urine sample for testing. The
5 sample tested positive for Opiates/Hydromorphone.

6 e. Respondent resigned from City of Hope in August of 2009, shortly after the drug test
7 results were reported.

8 **FIRST CAUSE FOR DISCIPLINE**

9 **(Obtain or Self Administer Controlled Substance)**

10 13. Respondent is subject to disciplinary action under Business and Professions Code
11 section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Business
12 and Professions Code, section 2762, subdivision (a), and for violating Health and Safety Code
13 sections 11170 and 11171 in that on or about July 29, 2009 prior to or after reporting for duty as a
14 registered nurse at City of Hope, Respondent obtained and/or possessed, and/or self-administered
15 the opiate drug Hydromorphone.

16 **SECOND CAUSE FOR DISCIPLINE**

17 **(Use of Controlled Substance to the Extent That Use Impairs Safety)**

18 14. Respondent is subject to disciplinary action under Business and Professions Code
19 section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Business
20 and Professions Code section 2762, subdivision (b), on the grounds of unprofessional conduct,
21 Respondent used controlled substances to an extent or in a manner dangerous or injurious to
22 herself of any other person or the public, or to the extent that such use impairs her ability to
23 conduct with safety the practice authorized by her license, in that on the morning of July 29,
24 2009, Respondent reported for duty at City of Hope under the influence of the opiate drug
25 Hydromorphone, and attempted to perform her duties in an altered and disoriented state,
26 resulting in the determination that she was unsafe to continue working at that time.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 476749, issued to Cheryl Ann Gasparini, a.k.a. Cheryl Ann Mitchener;
2. Ordering Cheryl Ann Gasparini to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;
3. Taking such other and further action as deemed necessary and proper.

DATED:

June 21, 2011 *Louise R. Bailey*

LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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